



1           2.       This action satisfies the requirements for conditional certification as a "Collective  
2 Action" under the Federal Labor Standards Act (FLSA). The questions of law and fact common  
3 to the members of the collective action with respect to the Defendants' calculation of the  
4 "regular rate" predominate over questions relevant only to individual members of the collective  
5 action. Collective action adjudication is superior to any other method of adjudication for the fair  
6 and efficient adjudication of this matter.

7           3.       This action is conditionally certified as a collective action pursuant to 29 U.S.C. §  
8 216(b).

9           4.       For purposes of conditional certification as a Collective Action Class, the parties  
10 agree Plaintiff is similarly situated to all individuals employed by Defendants in non-exempt  
11 positions covered by the collective bargaining agreement ("CBA") between Sugar Workers  
12 Union No. 1, Seafarers International Union of N.A. AFL-CIO ("SWU Local 1") and Defendants  
13 that worked beyond forty hours in a week and received any Incentives as defined in the  
14 Settlement Agreement and the motion at any time within the three year period prior to the date  
15 the action was filed or the effective date of any applicable tolling agreement. ("Collective Action  
16 Class") The Collective Action Class shall be divided into subclasses as follows:

17                   a. "Collective Action Opt-In Plaintiff Subclass" shall be defined as all  
18 Collective Action Class members who have opted into this action.

19                   b. "Collective Action Putative Plaintiff Subclass" shall be defined as all  
20 Collective Action Class members who have not opted into this action.

21           5.       This action also satisfies the requirements for preliminary certification as a "Class  
22 Action" under Federal Rules of Civil Procedure 23. The questions of law and fact common to the  
23 members of the class with respect to the Defendants' calculation of the regular rate as it relates to  
24 the California law claims alleged in the action predominate over questions relevant only to  
25 individual members of the class. Class adjudication is superior to any other method of  
26 adjudication for the fair and efficient resolution of this matter.

27           6.       For the purposes of Federal Rule of Civil Procedure Rule 23, this court  
28 preliminarily certifies a class consisting of all individuals employed by Defendants in non-

1 exempt positions covered by the CBA that worked beyond forty hours in a week and received  
2 any Incentives as defined in the Settlement Agreement and the motion at any time within the four  
3 year period prior to the date the action was filed or the effective date of any applicable tolling  
4 agreement whichever is earlier. ("California Class") The California Class is divided into  
5 subclasses as follows:

6 a. "California Opt-In Plaintiff Subclass" shall be defined as all Collective  
7 Action Class members who have opted into this action.

8 b. "California Putative Plaintiff Subclass" shall be defined as all  
9 Collective Action Class members who have not opted into this action.

10 7. The California Class and subclasses as defined in Plaintiff's motion are sufficiently  
11 numerous that joinder is not practicable. The California Class has almost three hundred  
12 individuals, while each subclass exceeds one hundred individuals each.

13 8. There are questions of law and fact common to the members of the California  
14 Class and subclasses. The questions of law and fact common to the members of the California  
15 Class and subclasses include:

- 16 • Whether Defendants alleged under calculation of the regular rate resulted in a  
17 failure to timely pay wages in violation of California Labor Code § 204;
- 18 • Whether Defendants alleged under calculation of the regular rate resulted in  
19 Defendants' unlawful withholding of wages in violation of California Labor Code  
20 §§ 221, 222 and 223;
- 21 • Whether Defendants alleged under calculation of the regular rate resulted in the  
22 failure to timely pay final wages to class members that separated from  
23 employment from Defendants in violation of California Labor Code §§ 201 and  
24 202 during the relevant time period;
- 25 • Whether Defendants alleged under calculation of the regular rate resulted in a  
26 failure to maintain required records in violation of California Labor Code § 1174  
27 and IWC Wage Order 1-2001 § 7;
- 28 • Whether Defendants alleged under calculation of the regular rate resulted in  
furnishing wage statements that did not comply with the requirements of  
California Labor §226(a);

- Whether Defendants alleged under calculation of the regular rate resulted in furnishing non-compliant wage statements that constituted an “injury” for the purposes of California Labor Code § 226(e) entitling them to damages and/or penalties;
- Whether, based on the foregoing, California Class members are entitled to penalties pursuant to PAGA (Cal. Lab. Code § 2698 *et. seq.*); and
- Whether, based on the foregoing, Defendants violated California’s Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code §§ 17200, *et. seq.*)

Plaintiff need only establish one common question of law or fact in order to meet the threshold set by Rule 23(a)(2) and Plaintiff’s above showing satisfies that requirement.

9. The named Plaintiff’s claims are typical of those of the California Class and subclasses he seeks to represent. Plaintiff Strong’s claims are typical of those of the California Class because they all arise out of Defendants’ calculation of the regular rate and the exclusion therefrom of the disputed items of remuneration used to determine premium compensation for overtime hours worked.

10. The proposed class representative will fairly and adequately protect the interests of the Collective Action and California Class and the respective subclasses.

11. The proposed representative has retained counsel who have the experience, knowledge and resources necessary to provide adequate representation of the Collective Action and California Class as well as the subclasses defined herein. Plaintiff’s counsel has also vigorously investigated and identified the claims in this action as well as expended resources in furtherance thereof. Thus, Plaintiff’s counsel meets the requirements of Federal Rule of Civil Procedure 23(g)(1).

12. The Court hereby preliminarily approves Plaintiff Ray Strong as representative of the Collective Action and California Class as well as the respective subclasses, and appoints the law firm of Mastagni Holstedt, A.P.C. as Class Counsel thereto.

13. Subject to the receipt and consideration by the Court of any objections to or comments on the Agreement at the hearing described in Paragraph 18 of this Order, the Court finds the Agreement and all of its terms to be fair, just and reasonable and in the best interests of the

1 members of the California Class as defined herein. The proposed settlement falls within the range  
2 of possible settlement approval, was negotiated at arms-length, and is worthy of being presented  
3 to the class members for their comments. The Court hereby preliminarily approves the proposed  
4 settlement under Rule 23(e) of the Federal Rules of Civil Procedure and the FLSA.

5 14. The Court hereby appoints Rust Consulting as the Settlement Administrator.

6 15. By no later than 21 days after the date of this order, the settlement administrator  
7 shall cause to be mailed by first class mail in substantially the same form submitted with the  
8 parties joint motion and in a manner consistent with this Settlement Agreement and this order,  
9 the “Notice Packet” consisting of the (1) Notice of Proposed Collective & Class Action  
10 Settlement and Settlement Hearing attached as Exhibits B & C, (2) the Claim Forms attached  
11 hereto as Exhibits D & E, and (3) the Opt-Out Forms attached hereto as Exhibits F & G, to the  
12 current or last known address of each Collective Action and California Class member.

13 16. The notice procedures set forth in the Settlement Agreement and the motion is  
14 hereby found to be the best notice practicable under the circumstances, and constitutes due and  
15 sufficient notice, in full compliance with the requirements of Rule 23(c) of the Federal Rules of  
16 Civil Procedure, the Constitution of the United States, and any other applicable law.

17 17. All reasonable costs incurred in identifying and notifying class members, as well  
18 as administering the settlement, shall be paid as set forth in the Settlement Agreement.

19 18. Pursuant to Federal Rules of Civil Procedure 23(e), a hearing (the “Settlement  
20 Hearing”) shall be held on Thursday, December 6, 2018 at 1:30 P.M., before the Honorable  
21 Richard Seeborg, United States District Judge for the Northern District of California, San  
22 Francisco Division, in Courtroom 3, 17<sup>th</sup> Floor at 450 Golden Gate Ave., San Francisco,  
23 California to determine the fairness, reasonableness, and adequacy of the proposed settlement  
24 and whether it should be finally approved, including its provision for a service payment to the  
25 named Plaintiff Ray Strong as well as the motion of Class Counsel for attorneys’ fees, costs, and  
26 expenses.

27 19. Members of the Collective Action Putative Plaintiff subclass who do not file a  
28 claim form will be deemed not to have waived any rights under the FLSA.

1           20.     Members of the California Class who do not opt-out of the Class within thirty  
2 (30) days from the date the settlement administrator mails the Notice Packet will be deemed  
3 to be a California Class Member and will be bound by the terms of the proposed settlement  
4 unless otherwise ordered by the Court.

5           21.     No class member shall be heard in opposition to the proposed settlement, or, if  
6 approved, the judgments and other orders to be entered thereon, to the requested award of  
7 attorneys' fees, costs, and expenses, or to the requested payment to the named Plaintiff, and  
8 no papers or briefs submitted by any such person shall be accepted or considered by the Court  
9 unless, such person has filed with the Clerk of the Court and served upon counsel for all  
10 parties a written statement that indicates the specific basis for such person's objections, along  
11 with any supporting documentation post marked within thirty (30) days from the date the  
12 settlement administrator mails the Notice Packet. This deadline shall be no earlier than  
13 twenty-eight days prior to the date of the Settlement Hearing set forth in paragraph 18 of this  
14 order.

15           22.     On or before the fourteenth day before the final approval hearing, Class Counsel  
16 shall file a motion for Final Approval of the proposed settlement and dismissal of action that  
17 addresses any objections timely filed in accordance with this order.

18           23.     On or before the fourteenth day prior to the final approval hearing, Class Counsel  
19 shall file with the Court and serve on all parties their motion for attorneys' fees, costs, and  
20 expenses, as well as the service payment, and all papers in support thereof, to be heard  
21 concurrently with the final approval hearing set forth in Paragraph 18 of this order.

22           24.     Any class member who has met the requirements of paragraph 20 herein, or his or  
23 her representative, may appear at the Settlement Hearing in person and be heard to the extent  
24 allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy  
25 of the proposed Settlement, the requested award of attorneys' fees, costs, and expenses, and the  
26 requested payment to Named Plaintiff Ray Strong. Any Class Member who does not make his or  
27 her objections as required by Paragraph 20 herein shall be deemed to have waived such objections  
28 and shall forever be foreclosed from making any objection to the fairness, reasonableness, and

1 adequacy of the proposed settlement, the requested award of attorneys' fees and costs, and the  
2 requested payment to named Plaintiff Ray Strong unless otherwise ordered by the Court.

3 25. The Court expressly reserves its right to continue the Settlement Hearing without  
4 further direct notice to the Class.

5 26. Class Counsel shall create and maintain a website, [www.mastagni.com/c&h-](http://www.mastagni.com/c&h-settlement)  
6 [settlement](http://www.mastagni.com/c&h-settlement) for the benefit of Collective Action and California Class members. This website shall  
7 provide the pleadings file related to the proposed settlement, the contact information for the  
8 settlement administrator as well as up to date information regarding the date and time of the  
9 Court's Settlement Hearing.

10 27. Non-substantive amendments may be made to the Settlement Agreement or  
11 Notice Packet upon written agreement of the Class Counsel and counsel for Defendants.

12  
13 IT IS SO ORDERED.

14  
15 DATED: September 6, 2018

A handwritten signature in black ink, appearing to read "Richard Seeborg", written over a horizontal line.

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18 HONORABLE RICHARD SEEBORG  
19 UNITED STATES DISTRICT JUDGE  
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